



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Proposed routine use; request for public comment.

SUMMARY: The FTC proposes to adopt a new routine use that would permit disclosure of the agency's Freedom of Information Act ("FOIA") request and appeal records to the Office of Government Information Services ("OGIS"), in order for OGIS to assist FOIA requesters in the processing and resolution of their requests and appeals.

DATES: Comments must be submitted by [insert date 30 days after date of publication in the FEDERAL REGISTER]. This routine use, which is being published in proposed form, shall become final and effective [insert date 60 days after date of publication in the FEDERAL REGISTER], without further notice unless otherwise amended or repealed by the Commission on the basis of any comments received.

ADDRESSES: Interested parties are invited to submit written comments by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Comments should refer to "Privacy Act of 1974; System of Records: FTC File No. P072104" to facilitate the organization of comments. Please file your comment online at <https://ftcpublic.commentworks.com/ftc/ogisroutineuse> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address:

Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold and Alex Tang, Attorneys, Office of the General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2424.

SUPPLEMENTARY INFORMATION:

Request for Comments

You can file a comment online or on paper. Write “Privacy Act of 1974; System of Records: FTC File No. P072104” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as a Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule

4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/ogisroutineuse> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Privacy Act of 1974; System of Records: FTC File No. P072104” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 30 days after date of publication in the FEDERAL REGISTER]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis to Aid Public Comment

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that the FTC is proposing to adopt a new "routine use" to the agency's Privacy Act System of Records Notice ("SORN") on Freedom of Information Act ("FOIA") Requests and Appeals, FTC-V-1.² This routine use will authorize the FTC to disclose FOIA request and appeal records covered by FTC-V-1 to the Office of Government Information Services ("OGIS"), in order for OGIS to assist requesters in the processing and resolution of their requests and appeals.

The OPEN Government Act of 2007 amended the Freedom of Information Act and created OGIS within the National Archives and Records Administration ("NARA"). The 2007 FOIA amendments require OGIS to review agency FOIA policies, procedures, and compliance, and to offer mediation services to resolve disputes between FOIA requesters and agencies. *See* 5 U.S.C. 552(h).

In order for OGIS to fulfill its statutory responsibilities, it requires access to FOIA request files originated and maintained by federal agencies including the FTC. However, because the FOIA request and appeal records covered by FTC-V-1 are governed by the

² This SORN, and the SORNs for all of the agency's other Privacy Act records systems, can be viewed on the FTC's Web site at <https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems>.

Privacy Act of 1974, their disclosure normally requires the prior written consent of the individual to whom the records pertain (including, for example, an individual filing a FOIA request), unless the agency has published a routine use authorizing disclosure.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected. 5 U.S.C. 552a(b)(3); *see also* 5 U.S.C. 552a(a)(7). The FTC believes that it is consistent with the purposes for which the FOIA request and appeal records covered by FTC-V-1 are collected to disclose such records routinely to OGIS to help OGIS mediate between individual FOIA requesters and agencies and ensure compliance with the FOIA statute. If agencies do not establish a “routine use” to provide for this proposed disclosure, OGIS would have to obtain the written consent of the individual FOIA requesters in order to obtain the access it requires to assist that requester. Simplifying the procedure for exchanging information would increase the efficiency of the FOIA administrative process. FTC staff understands that obtaining such consent has proven more complicated in some circumstances, e.g., when an agency, rather than the individual FOIA requester, seeks OGIS’s assistance to mediate between the agency and the individual FOIA requester. Accordingly, the Commission concludes that it is authorized under the Privacy Act to adopt a routine use permitting disclosure of Privacy Act records for such purposes.

In accordance with the Privacy Act, *see* 5 U.S.C. 552a(e)(4) and (11), the FTC is publishing notice of this routine use and giving the public a 30-day period to comment before adopting it as final. The FTC has provided advance notice of this proposed system notice amendment to OMB and the Congress, as required by the Act, 5 U.S.C. 552a(r), and OMB Circular A–108 (2016). The text of the proposed routine use is taken from the

routine use that has already been published in final form by the Department of Justice after public comment. *See* 77 FR 26580 (May 4, 2012). Accordingly, as set forth below, the Commission proposes a new routine use to become effective on the date noted earlier, unless the Commission amends or revokes the routine use on the basis of any comments received.

In light of the updated SORN template set forth in the newly revised OMB Circular A-108, the FTC is reprinting the text of the entire SORN, including the proposed new routine use, for the public's benefit, to read as follows:

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V. FTC Access Requests

SYSTEM NAME AND NUMBER:

Freedom of Information Act Requests and Appeals–FTC (FTC-V-1).

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. See Appendix III for other locations where records may be maintained or accessed.

SYSTEM MANAGER(S):

FOIA/PA Supervisor, Office of General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Trade Commission Act, 15 U.S.C. 41 et seq.; Freedom of Information Act, 5 U.S.C. 552.

PURPOSE(S) OF THE SYSTEM:

To consider requests and appeals for access to records under the Freedom of Information Act; to determine the status of requested records; to respond to the requests and appeals; to make copies of FOIA requests and frequently requested records available publicly, under the FTC's Rules of Practice and FOIA; to maintain records, documenting the consideration and disposition of the requests for reporting, analysis, and recordkeeping purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing requests for access to information under the Freedom of Information Act (FOIA); individuals named in the FOIA request; FTC staff assigned to help process, consider, and respond to such requests, including any appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Communications (e.g., letters, e-mails) to and from the requesting party; agency documents generated or collected during processing and consideration of the request, including scanned copies of materials responsive to the FOIA request.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained and agency staff assigned to help process, review, or respond to the access request, including any appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Request and appeal letters, and agency letters responding thereto, are placed on the FTC's public record and available to the public for routine inspection and copying. See FTC-I-6 (Public Records–FTC).

(2) As required by the FOIA, records that have been “frequently requested” and disclosed under the FOIA within the meaning of that Act, as determined by the FTC, are made available to the public for routine inspection and copying. See FTC-I-6 (Public Records–FTC).

(3) Disclosure to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

See also Appendix I for other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically using a commercial software application run on the agency's internal servers. Temporary paper files are destroyed once the request is complete.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of requesting party and subject matter of request. Records can also be searched by name, address, phone number, fax number, and e-mail of the

requesting party, subject matter of the request, requestor organization, FOIA number, and staff member assigned to the request.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with General Records Schedule 14.11-14.15, issued by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Requests, appeals, and responses available to the public, as described above. Access to nonpublic system records is restricted to FTC personnel or contractors whose responsibilities require access. Nonpublic paper records are temporary, maintained in lockable file cabinets or offices, and destroyed once the request is complete. Access to electronic records is controlled by “user ID” and password combination and other electronic access or network controls (e.g., firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See Appendix II.

CONTESTING RECORD PROCEDURES:

See Appendix II.

NOTIFICATION PROCEDURES:

See Appendix II.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records contained in this system that have been placed on the FTC public record are available upon request, as discussed above. However, pursuant to 5 U.S.C. 552a(k)(2), records in this system, which reflect records that are contained in other systems of records that are designated as exempt, are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a. See § 4.13(m) of the FTC Rules of Practice, 16 CFR 4.13(m).

HISTORY:

73 FR 33591-33634 (June 12, 2008).

By direction of the Commission.

Donald S. Clark,
Secretary.

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